IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 8123 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA
and
Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL INSURANCE CO LTD

Versus

AJIBEN PUNJABHAI VANKAR (CHAVDA) M/O MOLJI P VANKAR

Appearance:
DAKSHESH MEHTA for Petitioner
MR MEHUL S SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA
and
MR.JUSTICE H.K.RATHOD

Date of decision: 26/06/2000

ORAL JUDGEMENT

[Per : D.C.Srivastava,J.]

With the consent of the learned counsel for the parties, this appeal is being disposed of finally at the admission stage.

The appeal is directed against the interim award under section 163-A of the Motor Vehicles Act rendered on 4thNovember, 1999 by the Motor Accident Claims Tribunal, Kutchch at Bhuj awarding compensation of Rs.3,43,500.00 together with interest at the rate of 12% per annum from the date of application till the deposit, with proportionate costs.

We have heard the learned counsel for the appellant Shri Dakshesh Mehta and Shri M.S. Shah for the respondents.

Several contentions have been raised by the learned counsel Mr. Mehta assailing the interim award. However, some of the contentions were not raised in the belated written statement filed by the appellant. Consequently, those contentions could not be considered by the Tribunal.

The first contention before us has been that the income of the deceased was not properly determined and that mere income certificate was relied upon by the tribunal and that the appellant had no opportunity to cross examine the person who issued certificate of income. He further contended that the vouchers and account books were not filed to support that the income disclosed in the income certificate is the real income of the deceased. Likewise, he contended that the age of the deceased was also not correctly determined by the tribunal.

It may be mentioned that at the stage of deciding an application under section 163-A of the Motor Vehicles Act, the tribunal can rely upon the prima facie evidence and it is not required to enter into detailed inquiry. The tribunal has not blindly accepted the income certificate certifying income of the deceased at Rs.3000/- p.m. Some guess work was introduced by the tribunal that the deceased must be earning Rs.100/- per day looking to his occupation and that he could not be engaged for 30 days As such, monthly income of the deceased was assessed at Rs.2,500/- The tribunal made it clear that this finding regarding income of the deceased at the interim stage is not final and real income of the deceased will be determined in the petition under section

166 of the Motor Vehicles Act and the parties will be allowed to adduce evidence on income and challenge the same on merits. Likewise, regarding age of the deceased also, the tribunal has observed that the findings on prima facie evidence is subject to the actual determination of age during the disposal of the petition under section 166 of the Motor Vehicles Act. Consequently, these two findings given on prima facie consideration at this stage require no interference more particularly when these two matters have been left open for adjudication on evidence and merits in a petition under section 166 of the Motor Vehicles Act.

The next contention has been that the tribunal has not taken into consideration the ages of the parents of the deceased more particularly when the deceased was unmarried. He has argued that the second schedule does not furnish complete information and the tribunal was bound to consider the ages of the parents of the deceased. Since this plea was not raised in the written statement filed in reply to the application under section 163-A of the Motor Vehicles Act, the tribunal was justified in not considering this plea. This plea may be raised and determined by the tribunal in course of disposal of the petition under section 166 of the Motor Vehicles Act.

The last contention has been that the tribunal was not justified in awarding consortium to the parents of the deceased to the tune of Rs.5,000/-. We find force in this submission of the learned counsel Mr. Mehta because the second schedule provides at serial No.3 general damages in case of death which can be awarded by the tribunal, loss of consortium is at serial 3 (ii) loss of consortium is permissible if the beneficiary is spouse and the amount is Rs.5,000/-. Since the claimants are not the spouse of the deceased rather parents, they are not entitled to consortium To this extent, the interim award requires modification. On no other point, the award requires interference at this stage.

The appeal, therefore, succeeds in part only.

After deducting consortium to the tune of Rs.5,000/-, actual interim compensation would work out to Rs.3,38,500.00 with 12% interest and proportionate costs. The appeal, therefore, succeeds in part only and is partly allowed. The amount of compensation awarded by the tribunal is reduced to Rs.3,38,500/- The amount of interest and proportionate costs shall remain undisturbed. There shall be no order as to costs of this

appeal.

It is directed that the appellant shall deposit this amount before the tribunal within eight weeks from today and upon deposit being so made, it shall be disbursed in the light of the directions given by the tribunal in the interim award.

It is further directed that the respondents nos. 1 to 3 shall furnish written undertaking before the tribunal that they shall proceed with the pending petition under section 166 of the Motor Vehicles Act and shall not get it dismissed in default rather shall get it decided on merits. The undertaking be filed within four weeks from today. The tribunal has directed payment of 40% and investment of 60% in fixed deposit. The interest accruing on the fixed deposit shall be payable to the claimants respondents. The amount deposited in this court shall be remitted to the tribunal forthwith.

26.6.2000. (D.C.Srivastava,J.)

(H.k.Rathod,J.)